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EASTERN DISTRICT OF CALIFORNIA
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UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

IN RE: SOUTH Y FIREPLACE, INC. dba WEST COAST FENCE CO. INC., Debtor.	**NO: 10-47419-A-7** **DC No.: SLF 5** **AMENDED NOTICE OF MOTION FOR AUTHORIZATION TO SELL VEHICLES AT PUBLIC AUCTION** **Date: February 22, 2011** **Time: 10:00 a.m.** **Place: Department A** **The Honorable Michael S. McManus**

PLEASE TAKE NOTICE that Chapter 7 Trustee Gary R. Farrar is filing an Amended Motion for Authorization to Sell the Estate's Interest in Vehicles at Public Auction (the "Amended Motion"). The Amended Motion seeks authorization to sell the estate's interest in eight vehicles (the "Vehicles") at public auction. The Trustee believes the proposed sale is in the best interests of the creditors and this Court should approve it pursuant to Bankruptcy Code Section 363(b).

The Amended Motion is to be heard on February 22, 2011, at 10:00 a.m. in Department A, the Courtroom of the Honorable Michael S. McManus, located at 501 I Street, Sacramento, California.

The Amended Motion is based on this Amended Notice, the Amended Motion, the Amended Declaration of Gary R. Farrar, the papers on file in this case, and on arguments or evidence that may be presented at the time of the hearing.

YOUR RIGHTS MAY BE AFFECTED. You should read this Notice carefully and discuss it with your attorney if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

PLEASE TAKE FURTHER NOTICE that, pursuant to Local Rule 9014-1(f)(1), any opposition to the Application must be in writing and you must, at least 14 days before the hearing, (i) serve a copy of it on the Trustee, Gary R. Farrar, care of his counsel, Dana A. Suntag, The Suntag Law Firm, the Kress Building, 20 North Sutter Street, Fourth Floor, Stockton, California 95202, and on the Office of the US Trustee, 501 "I" Street, Suite 7-500, Sacramento, California 95814, and (ii) file it with the Court. The last date to serve and file opposition is **February 8, 2011**. You must include with your opposition adequate evidence to establish its factual allegations. Without good cause, you will not be heard at oral argument if you fail to serve and file written opposition in a timely manner. Moreover, your failure to serve and file a timely written opposition may be deemed a waiver of any opposition to the granting of the Application.

Further, under Local Rule 9014-1(f)(1)(ii), the opposition shall specify whether you consent to the Court's resolution of the disputed material factual issues pursuant to Federal Rule of Civil Procedure 43(e) (as made applicable by Federal Rule of Bankruptcy Procedure 9017). If you do not so consent, the opposition shall include a separate statement identifying each disputed material factual issue. The separate statement shall enumerate discretely each of the disputed material factual issues and cite the particular portions of the record demonstrating that a factual issue is both material and in dispute. Failure to file the separate statement shall be construed as consent to resolution of the objection and all disputed material factual issues pursuant to Federal Rule of Civil Procedure 43(e).

You are urged to consult the Court's local rules, which are available on the Court's website located at www.caeb.uscourts.gov.

FACTUAL BACKGROUND AND SUMMARY OF RELIEF SOUGHT

1. On October 14, 2010, the Debtor filed this case and Gary R. Farrar was appointed Chapter 7 Trustee.

2. The Debtor scheduled the Vehicles as follows:

a. 1995 Ford Dump Truck, which the Debtor valued at $3,150.00.

b. 1999 Ford F-350, which the Debtor valued at $3,875.00.

c. 1997 Chevy Flat Bed, which the Debtor valued at $2,760.00.

d. 2003 Ford Flat Bed, which the Debtor valued at $13,325.00.

e. 2005 Chevy Silverado, which the Debtor valued at $6,365.00.

f. 2001 Ford F-150, which the Debtor valued at $1,910.00.

g. 2004 Ford F-250, which the Debtor valued at $16,795.00.

h. 1998 Volvo S-70 T5SE, which the Debtor valued at $2,960.00.

3. The Vehicles are stored at Ernst & Associates Auctioneers, Inc.

4. The Debtor did not schedule any liens against the Vehicles and the Trustee is unaware of any liens.

SALE OF THE PROPERTY AT PUBLIC AUCTION

5. The Trustee believes, based on his knowledge and on Ernst's evaluation of the Vehicles, that there is equity in the Vehicles and a sale of the Vehicles at public auction is the best method of liquidating them for the benefit of the estate.

6. The Trustee is filing, concurrently with this motion, an application to employ Ernst.

7. The Trustee believes that by using an auction process, the Vehicles will be exposed to a large number of prospective purchasers and, for that reason, will likely be sold for the best possible price. Ernst engages in extensive advertising, including highway billboards, television, and newspaper advertising, and it mails advertising brochures to its subscriber list of approximately 6000 people.

8. If the Court approves this Motion, the Trustee intends to sell the Vehicles at public auction at Ernst's first available auction date. The Vehicles will be sold on an "AS IS" basis without any warranty. The proposed public sale will be held on the first available Saturday after the Court approves this motion, at 9:00 a.m. at Ernst, located at 824 Kiernan Avenue, Modesto, California 95356. Interested persons may inspect the Vehicles at Ernst on the Friday preceding the sale between 9:00 a.m. and 4:00 p.m. Information regarding the sale or subsequent sale dates, if any, may be obtained by telephoning Ernst, at (209) 527-7399.

9. The Trustee intends to accept the highest reasonable bid. If, in the exercise of the Trustee's business judgment, no reasonable bid is received, the Vehicles may be held for subsequent auction or private sale without additional notice.

10. The Trustee believes the sale of the Vehicles at a public auction is in the best interests of the creditors because it is likely to obtain the best possible price and should be approved by the Court under Bankruptcy Code Section 363.

AUCTIONEER COMPENSATION

11. The Trustee requests authorization to pay Ernst a 15 percent commission and to reimburse Ernst for reasonable expenses directly from the proceeds of sale, and for Ernst to collect a 15 percent buyer's fee directly from the buyer. The Trustee believes that this is a customary practice for the auction sale of personal property and one which encourages the use of auction professionals to assist with bankruptcy sales of property. The Trustee will file a report of the sale with the Court.

12. In addition, Ernst incurred expenses totaling $1410.00 to pick up the Vehicles from the Debtor's facilities in San Jose and Ripon and transport them to Ernst's location in Modesto in preparation for sale. These expenses consist of $1280.00 to transport vehicles from San Jose and $130.00 to transport vehicles from Ripon. As is noted in the

accompanying application to employ Ernst, the Trustee requests authorization to reimburse Ernst for these expenses.

CONCLUSION

The Trustee respectfully requests that the Court authorize the sale of the Vehicles at public auction on the terms and conditions set forth in this Amended Motion, approve the compensation of the auctioneer on the terms and conditions set forth in this Motion (15 percent seller's commission, reimbursement of reasonable expenses, and 15 percent buyer's fee), approve the reimbursement of the auctioneer for the expenses incurred totaling $1410.00 to pick up the Vehicles and transport them to Ernst's property, and that it grant such other and further relief as is appropriate.

Dated: January 25, 2011

THE SUNTAG LAW FIRM
A Professional Corporation

By: */s/ Dana A. Suntag*
DANA A. SUNTAG
Attorneys for Chapter 7 Trustee,
GARY R. FARRAR